IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Crl.MC.No. 3277 of 2005()

CC.2961/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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PETITIONERS: ACCUSED:

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1. SANTHAKUMARI, AGED 45,
   W/O. KRISHNANKUTTY, PUTHENVEETTIL,
   PARUR KAVALA, ALUVA WEST.

2. KRISHNANKUTTY, AGED 58,
   PUTHENVEETTIL, PARUR KAVALA, ALUVA WEST.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS: DEFACTO COMPLAINANT:

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1. SUB INSPECTOR OF POLICE, ALUVA.

2. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

3. DR. RADHA,
   KALPAKASSERY, GCDA COLONY, ALUVA.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K.MOHANAN, J.

Crl.M.C. NO. 3277 OF 2005

Dated this the 10th day of October, 2007

O R D E R

Petitioners, who are wife and husband, are the accused in C.C.2961/02 on the file of the Judicial First Class Magistrate Court-I, Aluva, preferred this Crl.M.C. with a prayer to quash Annexure A1 final report.

2. C.C.2961/02 pending in the court of Judicial First Class Magistrate Court-I, Aluva, is instituted upon Annexure A1 final report, which was filed by the Sub Inspector of Police, Aluva, after investigation of Crime No. 886/02 for the offence under Sections 420 read with Section 34 IPC. The said crime was registered on the basis of a private complaint filed by the 3rd respondent before the court below. The allegation in the above case is that the 1st petitioner, with the intention of making unlawful gain and causing unlawful loss to the defacto complainant, received a sum of Rs.41,000/- and 278.13 grams of gold ornaments from the defacto complainant and thereafter, the 2nd petitioner availed a loan by pledging the said gold ornaments from a financial institution namely, Muthoot Bank, Kalady Branch. The learned Magistrate issued summons to the petitioners after taking cognizance upon the police report and it was at this stage the petitioners approached this Court to quash the proceedings initiated against them.

3. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor.

4. Learned counsel for the petitioner submits that Annexure A1 final report does not disclose a prima facie case of cheating and the necessary facts are absent to constitute the offence of cheating. According to the petitioners, even if the entire charge is admitted, the same will constitute only a civil dispute. Learned counsel further submits that the gold ornaments were given for raising loan by pledging the same and merely because of the gold ornaments were pledged, it cannot be said that the accused have committed the offence of cheating until the same was not redeemed. The learned Public Prosecutor submitted that there are sufficient materials to proceed with the trial of the case. The materials collected would show that the accused has committed the offence and on the sufficiency of materials and evidence can be appreciated only at the time of trial.

5. Going by the averments contained in the Crl.M.C. and also on hearing the arguments of the learned counsel, it appears that there was a transaction between the defacto complainant and the accused and the other details of the transaction are yet to be ascertained at the time of trial during evidence. So, on the basis of the available materials, this Court is not in a position to come into a conclusion whether the offence has been committed or not. In Ground 7 of the Crl.M.C. it has been specifically

stated that the case was settled out of court on 12.4.04 by the petitioners on paying an amount of Rs.1,85,000/- to the defacto complainant towards the value of gold ornaments and she was agreed to speak out the same before the court and to compound the case before the court below. It is further discernible from Ground 7 of the Crl.M.C. that the matter can be compounded before the court on releasing the petitioner on bail, for which they have no sureties.

6. The prayer of the petitioners in this Crl.M.C. is to quash Annexure A1 final report and all proceedings thereon. What this Court is to consider whether Annexure A1 final report is liable to be quashed by invoking Section 482 of the Cr.P.C. As I have already pointed out, the petitioners are admitting the transactions regarding the receipt of Rs.41,000/- and 278.13 grams of gold ornaments and since the other aspects of the transaction are yet to be ascertained and at this stage it cannot be said that no offence under Section 420 has disclosed or not. Therefore the petitioners are not entitled to get a relief as sought for in this proceedings.

7. It is also pertinent to note that the matter has been settled out of court. If that be so, it is for the petitioners to approach the court below for effecting the settlement and compounding the offence. No doubt, the court below will consider the application for compounding the offences alleged against the petitioners, in case the parties are approaching the court below

by preferring a petition under Section 320 of Cr.P.C. It is open to the petitioners and the parties concerned to approach the court below for compounding the offence in which case the court below will consider and dispose of the same on merits.

8. In the light of the above facts and circumstances, the Crl.M.C. lacks merit. In case the petitioners are interested and approaching the court below with a petition under Section 320 of Cr.P.C., the court below will consider and dispose of the same on merits and in accordance with law.

With the above observations, this Crl.M.C. is dismissed.

V.K.MOHANAN, JUDGE

vps